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August 12, 2002

The Honorable Max Baucus
Chairman
The Honorable Chuck Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable W.J. "Billy" Tauzin
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Bill Thomas
Chairman
The Honorable Charles Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Centers for Medicare and Medicaid Services: Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update; Notice

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities--Update; Notice" (CMS-1202-N). We received the notice on July 31, 2002. It was published in the Federal Register as a notice on July 31, 2002. 67 Fed. Reg. 49798.

The notice sets forth the updates under the prospective payment system for skilled nursing facilities (SNFs) for fiscal year 2003. The annual updates are required by section 1888(e) of the Social Security Act, as amended by Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999, and the Medicare, Medicaid, and SCHIP Benefits Improvement and

Protection Act of 2000, related to Medicare payments and consolidated billing for SNFs.

Enclosed is our assessment of the CMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the notice. Our review indicates that the CMS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Managing Director, Health Care. Mr. Scanlon can be reached at (202) 512-7114.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Ann Stallion
Regulations Coordinator
Department of Health and
Human Services

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR MEDICARE AND MEDICAID SERVICES
ENTITLED
"MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM
AND CONSOLIDATED BILLING FOR SKILLED
NURSING FACILITIES--UPDATE; NOTICE"
(CMS-1202-N)

(i) Cost-benefit analysis

CMS has estimated the budgetary impact of the final rule to result in an increase in payments to skilled nursing facilities of approximately \$400 million in fiscal year 2003.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

CMS has certified that the notice will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The notice does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

CMS found "good cause" under 5 U.S.C. 553 to issue the notice without prior public comment as the statute requires annual updates to the rates, the methodologies used to update the rates have been previously subject to public comment, and the notice applies the previously established methodologies.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The notice does not contain any information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Statutory authorization for the rule

The notice is issued pursuant to the authority contained in section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)).

Executive Order No. 12866

The notice was reviewed by the OMB and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

CMS found that the notice does not contain federalism implications sufficient to warrant the preparation of a Federalism Assessment.